

Commission determines to entertain the Fleet Call proposal³⁵, the A&B Petition should be consolidated for comment with Fleet Call's proposal.

X. The Commission Should Not Entertain a Freeze on the 800 MHz SMR Band

Fleet Call's proposal to freeze all remaining 800 MHz spectrum nationwide would irreparably injure both existing SMR operators and the public interest.

Fleet Call's freeze request also is anti-competitive. At a time when the Commission is promoting diversity and competition through its video dial tone and PCS proceedings, for example, Fleet Call requests that the number of effective SMR competitors be reduced by (a) denying existing operators the ability to expand within their effective allocated frequency band, and (b) reserving the remaining large frequency block for a single operator. This proposal is anti-competitive in a number of respects.

First, SMR operators would be prevented from meeting new growth in the normal course of system operations. System congestion would result, and dissatisfied customers would cancel subscriptions as system quality deteriorated. Investment in the existing industry rapidly would disappear; lenders would be unwilling to invest in entrepreneurs who cannot grow.

³⁵ ICLP does not endorse such action. A proposal to make frequency blocks for auction from the remaining available 800 MHz spectrum in smaller markets should not be the subject of a Notice of Proposed Rule Making, for the reasons stated.

The public would be injured in that new service requests could not be filled, and the quality of service would deteriorate. This likely would cause the migration of potential customers to other, higher-priced mobile communications alternatives. Thus, competition in the mobile communications marketplace would be reduced, the public would pay more for service, and alternative technologies would be reduced.

These concerns are not speculative. ICLP already has had to address the potential impact of the freeze on its business plans, and the above statements reflect the consequences that ICLP would face in a market which historically and presently is growing rapidly. ICLP's ability to remain competitive in the market could be changed overnight by implementation of a freeze, since competitors would instantly advise potential and existing customers of the impending deterioration in system quality which could result during the two-to three-year lifespan of a freeze.

The 900 MHz band offers no relief from a freeze on the 800 MHz frequencies. 900 MHz equipment availability and cost continue to be problems for successful mobile operations. The 900 MHz frequencies would not be compatible with the 800 MHz end user equipment currently used by customers.

Generally, the Commission itself institutes a freeze based on some overriding public interest considerations. Here, a freeze is proposed by a private party which wishes to reserve spectrum for its own expansion. The irreparable injury to existing smaller market operators vastly outweighs any injury Fleet Call

might suffer (which is none, and, in any event, speculative as to Fleet Call's interest in future business prospects in these markets). The injury to SMR service to the public vastly outweighs any potential and unlikely private injury to Fleet Call. Any public interest in consolidating SMR frequencies can be accomplished easily through less drastic means, simply by relaxing or eliminating the existing rules on loading and ownership.

Thus, no harm to the public will result from permitting applicants to continue to construct and operate facilities. If applicants attempt to "speculate" by applying for facilities they cannot construct or operate, marketplace economics and the FCC's construction deadlines will return such channels to the Commission³⁶.

³⁶ Fleet Call can hardly be heard to complain about the industry response to its call for a freeze on new construction. See Fleet Call "Petition to Initiate Inquiry", filed June 30, 1992. What did Fleet Call expect? Its call for a freeze created panic in the industry, and existing operators would be expected to take lawful steps to protect their ability to expand their systems.

Applications for 18 channels were on file in the Boise market prior to Fleet Call's freeze request filed April 22, 1992. At this pre-freeze rate of expansion of 18 channels per quarter, the remaining 100 channels in Boise would be constructed in the next year and a half in any event (i.e., by mid-1993). The demand for additional 800 MHz service is there, and Fleet Call's freeze request has only naturally accelerated operator's scheduled plans for system growth. Fleet Call's Petition to Initiate Inquiry is without merit, and should not be entertained.

**XI. Auctioning the Remaining 800 MHz
Spectrum Is Not in the Public
Interest, and a "Pilot Program"
Would Be Unconstitutional**

Fleet Call entices the Government to institute a flawed spectrum reallocation proposal by proposing a spectrum auction. This gambit is transparent. The SMR industry's trade association, of which Fleet Call is a member and sits on the Board of Directors, has long opposed spectrum auctions. Presumably, in the past, Fleet Call supported the trade association's position.

However, determined to propose a radical plan to prevent further SMR industry expansion, Fleet Call now asserts that an 800 MHz spectrum auction is in the public interest.³⁷ Fleet Call is left with little else to argue, since the public interest considerations otherwise weigh against its proposals, as demonstrated herein.

The debate over the public interest merit of spectrum auctions has been raging in Congress for many years, and to date a spectrum auction bill has not passed. The "public interest" considerations of the Government do not begin and end with the dollar sign.

There is much that Fleet Call has overlooked in proposing to make the SMR industry a "pilot program" for auctions. ICLP hereby asserts its constitutional rights to Equal Protection with

³⁷ "Competitive bidding will also generate hundreds of millions of dollars in licensing bid receipts for the United States Treasury." Fleet Call Petition at ii.

respect to obtaining frequency spectrum. The Commission has before it proposed rule making proceedings to assign substantial portions of the UHF spectrum for ATV use to broadcasters to enhance that industry's competitiveness. The Commission also adopted a PCS NPRM yesterday, without Congressional authority for auctions. A "pilot program" for auctioning off 800 MHz frequencies assigned to the SMR service would deny the SMR operators equal protection of the law, where other applicants, including competitors in other services for Government radio frequencies of any kind would not be required to bid for such spectrum. A "pilot program" would be unconstitutional.

Fleet Call's predictions of hundreds of millions of dollars for the Federal Treasury are also speculative, unsupported, and inflated. One need only recall New Zealand's disastrous early experience with spectrum auctions to realize that the Government can have no assurance of any particular value attached to a raw frequency. Just as Fleet Call would be required to make securities law disclosure statements to justify estimates of spectrum value, Government officials should guard against the natural temptation to believe "pie in the sky" predictions about spectrum value poured into a petition for rule making.

Over the past ten years the SMR industry has invested \$850 - \$950 million in SMR infrastructure. Can the Government so easily believe that the industry will pay "hundreds of millions of dollars"³⁸ for the remaining SMR frequencies, where comparable or

³⁸ Id.


greater infrastructure investments may be required? Beware the easy prediction. Fleet Call has not proven its case either for the value of the spectrum or that public interest lawfully can be served through its proposed "pilot program".

WHEREFORE, the premises considered, Fleet Call's Petition for Rule Making, including its request for a spectrum freeze, should be dismissed and denied.

Respectfully submitted,

IDAHO COMMUNICATIONS
LIMITED PARTNERSHIP

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EXHIBIT A

EMCI

Telecommunications Consultants

A Malarkey-Taylor Company

SMR Embedded Infrastructure Investment

**Prepared by
Economic and Management Consultants International, Inc.**

Introduction

Idaho Communications Limited Partnership (ICLP) requested that Economic and Management Consultants International, Inc. (EMCI) prepare an analysis of the investment by the SMR industry in embedded infrastructure.

EMCI Qualifications

Economic and Management Consultants International, Inc. (EMCI) provides research and analysis of the wireless communications industry including SMR, cellular, paging, and microcell technologies. Since 1989, EMCI has conducted surveys of the SMR industry as published in its study THE STATE OF SMR: A LOOK AT SMR AND THE PRIVATE RADIO INDUSTRY (1991). EMCI has also assisted a number of clients on a consulting basis with researching and analyzing issues surrounding the SMR industry including marketing, economic, and financial matters. In addition to publications and consulting, EMCI is also known in the SMR industry through its speeches and articles.

Methodology and Findings

In order to arrive at the embedded capital investment made by the SMR industry, EMCI examined the major categories of equipment that are used in an SMR system. The major component of an SMR system is base station equipment which consists of repeaters, (which relate to the number of channels in the system), multicouplers, and combiners.

To estimate the total dollar size of embedded SMR base station equipment, EMCI used typical costs per channel for SMR base station equipment. The cost per channel depends on the functionality of the system and the number of channels in a particular system. Given that there are a variety of types and sizes of SMR systems, EMCI used two estimates of typical channel costs, \$16,000 and \$18,000 (see Table 1).

Related equipment includes antennas, transmission lines and other equipment. The number of antennas used is a function of the number of base stations and ranges in price from approximately \$1,000-\$2,000. Transmission line cabling costs are estimated by taking typical per foot cost and average length of transmission lines for SMR systems.

EMCI

Telecommunications Consultants

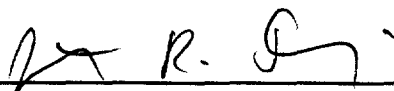
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Other equipment includes such things as spare parts, testing equipment, and related equipment that is not captured by the other categories. It should be noted at this point the analysis does not include tower costs since many towers are leased and not purchased and therefore do not represent a capital investment.

From this analysis, EMCI has concluded that the total capital investment in SMR infrastructure at the end of 1991 ranges from \$850 million to \$950 million.

This analysis of total embedded capital investment does not include the investment made by SMR end users, only SMR operators. At the end of 1991, there was an installed base of 1.2 million end user SMR units. At an average price of \$1,000 per unit, the total invested by end users amounts to over \$1 billion dollars above and beyond what SMR operators have invested in infrastructure equipment. This figure is even higher when other end user equipment, such as dispatch consoles, are considered.

Submitted by:



Jonathan R. Tarlin
Senior Consultant, EMCI, Inc.

7 / 17 / 92

Date

Table 1
Total Capital Investment in the Specialized Mobile Radio Industry (SMR): End Year 1991

	Low	High
Estimated Number of Built Systems	6,000	6,000
Avg. Number of Channels Per System	7	7
Total Channels	42,000	42,000
Avg. Cost Per Channel: Base Stations	\$16,000	\$18,000
Total Cost For Base Stations	\$672,000,000	\$756,000,000
Related Equipment:		
Antenna	\$12,960,000	\$12,960,000
Transmission Line	\$25,200,000	\$25,200,000
Other	\$134,400,000	\$151,200,000
Total Related Equipment	\$172,560,000	\$189,360,000
Total SMR Embedded Investment	\$844,560,000	\$945,360,000

Source: EMCI, Inc.

EXHIBIT B

EXHIBIT B

Wait-Listed MSA Markets In Which Fleet Call
Claims Frequency Availability

<u>COMMUNITY</u>	<u>WAIT LIST AREA</u> ¹	<u>DISTANCE BY MILES</u> ²	<u>FREQUENCIES CLAIMED</u> ³	<u>WAIT LIST FREQUENCIES</u> ⁴
Lansing, MI	Detroit, MI	89	195	93
Florence, S.C.	Charlotte, N.C.	90	250	65
Winston Salem/ High Point	Charlotte, N.C.	80	58	65
Columbia, S.C.	Charlotte, N.C.	80	156	65
Killeen-Temple	Austin, TX	55	84	10
Bryan, TX	Austin, TX	80	74	77
Sherman, TX	Dallas/Fort Worth, TX	55	79	77
Waco, TX	Dallas/Fort Worth, TX	90	99	77
Greenville- Spartanburg, S.C.	Charlotte, N.C.	60/95	83	65
Macon, GA	Atlanta, GA	82	128	60
Athens, GA	Atlanta, GA	66	165	60
Canton, OH	Cleveland, OH	60	82	89
Youngstown- Warren, OH	Cleveland, OH	77/52	77	89
Mansfield, OH	Cleveland, OH	78	177	89

¹ Public Notice, "Private Radio 800 MHz Radio Systems Application Waiting List" F.C.C. mimeo No. 23186, (Released May 22, 1992).

² Approximate distance of community from wait-listed reference point.

³ Frequencies claimed by Fleet Call as being available.

⁴ Total frequency requests which cannot be filled at present.

EXHIBIT C

TECHNICAL STATEMENT
IN SUPPORT OF COMMENTS ON
PETITION FOR RULE MAKING (RM-7985)
IDAHO COMMUNICATIONS, L.P.

This technical statement has been prepared on behalf of Idaho Communications, L.P. in support of its comments regarding the Petition for Rule Making (RM-7985) filed by Fleet Call, Inc. (herein "Fleet Call").

In its petition, Fleet Call has requested that the Commission set aside blocks of 800 MHz Specialized Mobile Radio (SMR) frequencies (preferably 105 channels per block) for exclusive use of future, digital SMR systems. In support of its request, Fleet Call identifies Metropolitan Statistical Areas (MSA's) which it claims have more than 42 available frequencies from the 800 MHz SMR channel list in 47 CFR 90.617(d). For each MSA, Fleet Call provides a list of the frequencies which it states are available. Idaho Communications, L.P. (herein "Idaho Communications") is a licensee of SMR facilities in and around Boise, Idaho, one of the MSA's identified by Fleet Call as having 130 available frequencies. Recognizing the increasing demand for frequencies in the Boise, Idaho area, Idaho Communications requested that a study be performed to determine the accuracy of the Boise MSA's "available" frequencies, identified by Fleet Call, and that the method used by Fleet Call to identify these frequencies be evaluated.

Fleet Call identified 130 "available" frequencies within 55 miles (89 kilometers) of the Boise reference coordinates. Using the Commission's database of July 13, 1992, a search was conducted to determine if there were licenses or pending applications for any of the frequencies that Fleet Call had identified as available in Boise, Idaho. Based on information in the database, applications for 18 of the 130 frequencies identified by Fleet Call in the Boise area had been received by the Commission on or before April 22, 1992, the date of Fleet Call's petition. These 18 applications are at sites within 55 miles (89 kilometers) of the Boise reference coordinates, and, based on information in the database, the applications for these 18 frequencies were received by the Commission between March 25, 1992 and April 22, 1992 inclusive.

As to the method used by Fleet Call to identify the "available" frequencies in the MSA's, it is noted that Fleet Call used a search radius of 55 miles (89 kilometers) from the city reference coordinates for each area evaluated. The basis for this search radius, as identified in Attachment C to its petition, is the co-channel separation distance required by 47 CFR 90.621(b)(4) for a facility with 100 watts effective radiated power at an antenna height above average terrain of 61 meters. Thus the frequencies listed as "available" in the Fleet Call petition are technically those available to a proponent requesting reduced power and antenna height at the city reference coordinates identified for each MSA.

However, Section 90.621(b) of the rules states that "the ordinary separation between co-channel systems will be 113 km. (70 mi.)..." By using the shorter separation distance in Section 90.621(b)(4), Fleet Call

potentially identifies more frequencies as "available" in each market than application of the ordinary separation criteria would permit. The result is that Fleet Call's Exhibit C lists as "available" frequencies which may not be available to an SMR operator under application of the normally required 70-mile separation criterion.

David E. Dickmann

David E. Dickmann

July 17, 1992

CERTIFICATE OF SERVICE

I, Rose I. Dodson, a legal secretary with the law firm of Ross & Hardies, do hereby certify that I have this 17th day of July, 1992 served by first-class mail, postage pre-paid, a copy of the foregoing "Opposition To Petition for Rule Making" to:

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BY: 
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